

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CROTON WATCH CO., INC.,

Plaintiff,

v.

CASE NO. 06-CV-662 (GD)

NATIONAL JEWELER MAGAZINE, INC. AND  
TESLAR INSIDE CORPORATION,

Defendants.

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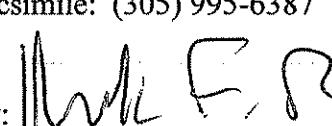
**NOTICE OF MOTION**

PLEASE TAKE NOTICE, upon the accompanying Memorandum of Law in Support of Teslar Inside Corporation's Motion to Dismiss, the exhibits thereto, and upon all pleadings heretofore had herein, the undersigned, pursuant to Fed.R.Civ.P. 12(b)(6), will move this Court, the United States District Court in the Southern District of New York, on a date and at a time designated by the Court, for an Order dismissing this action because the Amended Complaint fails to state a claim upon which relief may be granted.

Respectfully submitted,

BROAD AND CASSEL  
Attorneys for Defendant  
One Biscayne Tower, 21<sup>st</sup> Floor  
2 South Biscayne Boulevard  
Miami, Florida 33131  
Telephone: (305) 373-9467  
Facsimile: (305) 995-6387

By:

  
Mark F. Raymond, P.A. (MR 1583)  
Florida Bar No.: 0373397  
Admitted *Pro Hac Vice*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Dismiss has been served via U.S. Mail upon Max Moskowitz, Esq. Ostrolenk, Faber, Gerb & Soffen, LLP, 1180 Avenue of the Americas, New York, New York 10036 on the 3<sup>rd</sup> day of April, 2006.

By:

MARK F. RAYMOND

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**DEFENDANT TESLAR INSIDE CORPORATION'S MOTION TO DISMISS**

Defendant, TESLAR INSIDE CORPORATION ("Teslar"), moves for entry of an order dismissing Plaintiff, CROTON WATCH CO., INC.'s ("Croton"), Amended Complaint pursuant to Rule 12(b)(6), Fed.R.Civ.P. for failure to state a cause of action, and as grounds therefore states:

1. On January 27, 2006, Croton filed its first Complaint. Teslar filed a Motion to Dismiss. In response to that Motion, on or about March 10, 2006, Croton served Teslar with the Amended Complaint in this action.

2. In Croton's Amended Complaint, Croton sued Teslar, along with Defendant, National Jeweler Magazine, Inc. ("National Jeweler"), for defamation, tortious interference with a prospective economic advantage, and violations under the Section 43 of the Lanham Act, 15 U.S.C. § 1125(a).

3. As more fully set forth in Teslar's Memorandum of Law, concurrently filed with this Motion, Plaintiff's Amended Complaint fails to state a cause of action, and must be dismissed for the following reasons:

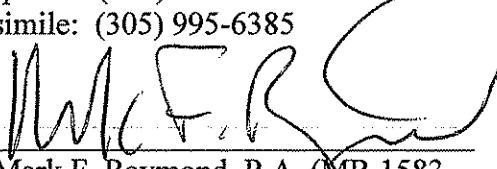
- a. Count I (defamation *per se*) should be dismissed because all of the statements were true or substantially true. The statements also fall within the "single instance exception" so that Croton's Amended Complaint is deficient based on Croton's failure to plead special damages;
- b. Count II (tortious interference with a prospective economic advantage) should be dismissed because it cannot establish "wrongful means" utilized by Teslar to interfere with Croton's prospective economic advantages;
- c. Count III (false advertising and unfair competition) should be dismissed because the article was neither published by a person in commercial competition with Croton nor did the article constitute commercial advertising or promotion.

WHEREFORE Defendant, Teslar respectfully requests that this Court enter an Order dismissing Plaintiff Croton's Amended Complaint because it fails to state a claim upon which relief can be granted.

Respectfully submitted,

BROAD AND CASSEL  
Attorneys for Defendant  
One Biscayne Tower, 21<sup>st</sup> Floor  
2 South Biscayne Boulevard  
Miami, Florida 33131  
Telephone: (305) 373-9427  
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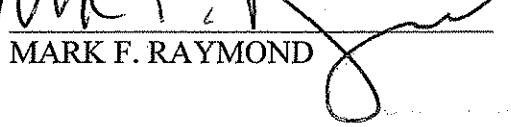
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By:

  
MARK F. RAYMOND

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